

Thomas V. Dulcich, OSB #802105

Email: tdulcich@schwabe.com

Jordan R. Silk, OSB #105031

Email: jsilk@schwabe.com

Sara Kobak, OSB #023495

Email: skobak@schwabe.com

SCHWABE, WILLIAMSON & WYATT, P.C.

1211 SW 5th Ave., Suite 1900

Portland, OR 97204

Telephone: 503.222.9981

Facsimile: 503.796.2900

Attorneys for Dulcich, Inc., an Oregon Corporation

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**DULCICH, INC., an Oregon
corporation,**

Plaintiff,

v.

**ALTERRA EXCESS & SURPLUS
INSURANCE COMPANY, a Delaware
corporation,**

Defendant.

Case No. 3:16-cv-00305

COMPLAINT - BREACH OF
INSURANCE CONTRACT

DEMAND FOR JURY TRIAL

For its complaint against defendant, plaintiff alleges:

PARTIES AND VENUE

1. Plaintiff Dulcich, Inc. ("Pacific") is a privately-owned Oregon corporation

with its business roots in Portland beginning in the 1940s and with its principal place of

business now in Clackamas County, Oregon. Pacific owns a number of entities that are collectively known as “Pacific Seafood Group,” which serve the public by the production, distribution and wholesaling of fish, shellfish and other seafood products.

2. Alterra Excess & Surplus Insurance Company (“Alterra” or “Insurer”) is a Delaware corporation having its principal place of business in the state of Virginia.

3. On or about December 1, 2012, the Insurer sold to plaintiff a policy of insurance of \$15,000,000 excess of \$10,000,000 for the purpose of insuring against certain risks including the risk of fire. The insurance policy covered the time period December 1, 2012 to December 1, 2013 and the policy number is MAX4XP0060530. Plaintiff paid the agreed upon premium for the insurance sold by the Insurer.

4. The United States District Court for the District of Oregon has jurisdiction over this case because the parties are citizens of different states and the amount in controversy exceeds the sum of \$75,000. This district is a proper venue for this case because the policy of insurance sold by the Insurer was issued in this district, the plaintiff is a citizen of the State of Oregon and has its principal place of business in this district, and the loss covered by the policy of insurance occurred in this district.

CLAIM FOR RELIEF

5. The Insurer’s policy number MAX4XP0060530 for the amount of \$15,000,000 excess of \$10,000,000 was written to “follow form” (except where it provided different language) to the underlying policy of insurance issued by Westport Insurance Corporation, policy number 31-3-75425.

6. On or about June 4, 2013, the Pacific Coast Seafoods fish processing plant in Warrenton, Oregon was destroyed by fire. The Pacific Coast Seafoods fish processing plant was insured by plaintiff under the Insurer's policy of insurance.

7. Within one month of the fire loss in Warrenton, Oregon, Westport Insurance Corporation paid \$5,000,000 to plaintiff. Within one year of the fire loss Westport Insurance Corporation paid its entire policy limit of \$10,000,000 to perform its duties under its contract of insurance to provide a partial payment for the loss of building, equipment, extra expenses incurred, and lost business income as a result of the destruction by fire of the Warrenton, Oregon fish processing plant.

8. Over the past two years, Alterra and its authorized representatives have requested from Pacific and have been provided by Pacific numerous spreadsheets and multiple sets of invoices and other information supporting Pacific's insurance claim.

9. Despite extensive work by Pacific to provide information to Insurer establishing that the total loss because of the June 4, 2013 fire was well in excess of \$10,000,000, Alterra has paid nothing to Pacific. More than two years after the fire and after Pacific spent hundreds of hours and tens of thousands of dollars at Alterra's request to determine how much Alterra owes under its insurance policy, Alterra belatedly has taken the position that Pacific was overpaid by Westport, the primary insurance company.

10. During the years 2013-2015, Pacific provided at the Insurer's request numerous documents and voluminous financial information about plaintiff, as well as information about the fish processing plant and equipment destroyed by the fire in

Warrenton, Oregon. While certain issues remained subject to continuing adjustment and negotiation, as of May 5, 2015 an authorized representative of the Insurer indicated that \$1,557,851.49 should be sent to plaintiff as an initial interim payment under the Alterra excess policy of insurance. Alterra's authorized agent, Robert D. Stone, stated in writing on May 5, 2015 that a partial interim payment would be made to Pacific, as follows –

“We have been given authority by Alterra . . . to send [Pacific] an ACV payment totaling \$1,557,851.49 as indicated on our claim summary.” Mr. Stone also told Pacific by telephone that the check for over \$1.5 million was “sitting on the desk” in front of him.

11. Thereafter, and without warning, on June 17, 2015 the Insurer purported to repudiate its position and claimed that it had no obligation to pay any further funds to plaintiff, and that Pacific in fact had been overpaid by Westport Insurance Corporation. This was the first time in two years of extensive communications, extensive requests for information from Pacific, extensive information provided by Pacific, and adjusting activities being carried on by both parties that Alterra had ever suggested that Westport Insurance Corporation had overpaid and that Pacific was not entitled to any further payment. Pacific thereafter attempted to and did provide further information to Alterra and its representatives to verify the losses sustained by Pacific, including an in-person meeting with personnel who could and did verify the presence of certain equipment and personal property destroyed in the fire, but Alterra still has refused to tender any sums to Pacific. To the date of the filing of this case, Insurer has made no tender to Pacific for losses sustained and the Insurer's tender as of this date is zero.

12. Pacific has calculated and provided full documentation to establish the value of all losses from the June 4, 2013 fire covered under the insurance it purchased, as approximately \$32,400,000. If the underlying coverage paid by Westport Insurance Corporation is deducted, Alterra still owes Pacific substantial sums up to the limits of its policy of insurance for the losses sustained by Pacific, even after the Insurer is able to take advantage of all legitimate adjustments and exclusions available to it under the insurance policies. Insurer's tender to Pacific for those losses is zero.

13. The Insurer has breached its contract of insurance by failing to pay sums owing under its policy of insurance and is liable to plaintiff in the sum of its insurance policy limits of at least \$15,000,000, such additional sums that may be available from Insurer under certain provisions of its contract of insurance, or such lesser sums as this Court may find is due and owing, plus pre-judgment interest from an appropriate date prior to the filing of this action.

14. Pacific is entitled to recover from Insurer all of Pacific's expenses of litigation including reasonable attorney fees pursuant to ORS 742.061. Pacific filed a proof of loss with the Insurer more than six months prior to the commencement of this action and more than six months prior to any payment made by the Insurer, which has been zero. Insurer Alterra has made no payment and as of the time of the filing of this action has not tendered to Pacific any payment.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for a money judgment against defendant in the amount of \$15,000,000, or such additional sum as may be available under defendant's contract of insurance, or such lesser sum as this Court may find is due and owing, together with pre-judgment interest from an appropriate date, and plaintiff further prays for a money judgment against defendant for plaintiff's expenses incurred in this litigation including reasonable attorney fees, and plaintiff further prays for a judgment in the full amount of statutory costs and disbursements to which plaintiff is entitled. Plaintiff prays further for any other relief that this Court deems just, equitable or necessary.

Dated this 18th day of February, 2016.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Thomas V. Dulcich
Thomas V. Dulcich, OSB #802105
Jordan R. Silk, OSB #105031
Sara Kobak, OSB #023495
Telephone: 503.222.9981
Facsimile: 503.796.2900
Of Attorneys for Dulcich, Inc., an
Oregon Corporation

REQUEST FOR JURY TRIAL

Plaintiff requests trial by jury under Fed. R. Civ. P. 39(a) and Local Rule 38-1.

Dated this 18th day of February, 2016.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ Thomas V. Dulcich
Thomas V. Dulcich, OSB #802105
Jordan R. Silk, OSB #105031
Sara Kobak, OSB #023495
Telephone: 503.222.9981
Facsimile: 503.796.2900
Of Attorneys for Dulcich, Inc., an
Oregon Corporation